

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

CASE NO.: 2:14-cr-76-FtM-38MRM

MICHAEL TERRILL FAIRCLOTH

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**ORDER**<sup>1</sup>

Before the Court is Defendant Michael Faircloth's *pro se* Motion to Dismiss the Indictment filed on December 16, 2019. ([Doc. 260](#)). For the below reasons, the Court denies the motion.

In July 2014, a federal grand jury indicted Faircloth for possessing a firearm as a convicted felon. ([Doc. 1](#)). Faircloth moved to dismiss the Indictment because of the Supreme Court's then-recent decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). The Court denied the motion. ([Doc. 108](#)). Fast-forward to January 2016: a jury convicted Faircloth on the indicted charge. ([Doc. 161](#)). The Court then denied his motion for a new trial ([Doc. 188](#)). A year later, the Court sentenced him to 120 months' imprisonment ([Doc. 227](#)) and denied his motion to correct his sentence ([Doc. 235](#)). Faircloth appealed, but the Eleventh Circuit affirmed his conviction and sentence. ([Doc. 258](#)). Still unhappy, Faircloth again tries to dismiss the Indictment, but this time for failure to state an offense under [Federal Rule of Criminal Procedure 12\(b\)\(3\)\(B\)\(v\)](#). But the motion is untimely.

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<sup>1</sup> Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

Rule 12 motions allege a defect in the indictment for failing to state an offense are *pretrial* motions made before trial. See [Fed. R. Crim. P. 12\(b\)\(3\)](#). This rule aligns with the Criminal Scheduling Order ([Doc. 6](#)) that set deadlines for filing such motions. Plus, Faircloth already tried moving to dismiss the Indictment that the Court denied. Faircloth has been tried, convicted, and sentenced. And appealed those matters to no avail. Faircloth's newest motion to challenge the Indictment is too late.

Accordingly, it is now

**ORDERED:**

Defendant Michael Faircloth's Motion to Dismiss ([Doc. 260](#)) is **DENIED**.

**DONE AND ORDERED** in Fort Myers, Florida on this 21st day of January 2020.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

Copies: Parties of Record